IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO.25 OF 1990
WITH
CROSS OBJECTION

The State of Maharashtra through the Special Land Acquisition Officer Metro Centre No.IV, Panvel, Taluka Panvel, District Raigad. .. Appellant (Org.Opponent)

Versus

Shri Tukaram Kalu Patil Age Adult, residing at Owe Peth Taluka Panvel, District Raigad. .. Respondent (Org.Claimant)

Mrs.G.A.Mulekar, Assistant Government Pleader, for the Appellant.

Mr.S.R.More, Advocate for the Respondent, absent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 25TH NOVEMBER 2004

ORAL JUDGMENT :

. This First Appeal is directed against the judgment and award dated 31st January 1989 passed by the Civil Judge, Senior Division, Alibag, District Raigad in Land Acquisition Reference No.31 of 1986. The suit lands constituted by lands in Owe Village which are at a short distance from the Bombay-Pune National Highway, Diva-Panvel Railway line, Taloja Railway Station as well as Navade M.I.D.C. Industrial Estate. After issuance of the Notification under Section 4 of the Land

Acquisition Act, 1894 (hereinafter referred to as "the Act") on 3rd February 1978, the S.L.A.O. made an Award granting Rs.48,372/- as compensation. This Award is dated 10th March 1986. Possession has been taken over on the same date. Aggrieved by the compensation awarded, the Claimant i.e. the Respondent herein, filed Reference for enhancement of compensation under Section 18 of the Act. The Reference Court has enhanced the compensation and held that compensation at the rate of Rs.12/-, Rs.10/- and Rs.8/- per sq. mtr. can be awarded in respect of the three different suit lands. Accordingly, the additional amount awarded as compensation is Rs.1,23,100/-. Solatium of 30% of the value as provided under Section 23(2) of the Act has been awarded at Rs.36,930/-. Compensation payable under Section 23(1A) has been awarded at Rs.1,95,729/-. Interest on the amount from 10th March 1986 to 31st January 1989 as provided under Section 28 has been calculated at Rs.80,689/-. After deducting Rs.48,372/- which was awarded by the S.L.A.O. and paid, the net amount which the Reference Court has awarded to the Respondent is Rs.3,88,076/-.

2. By the present First Appeal, the State challenges the Award of the Reference Court.

3. Mrs.Mulekar, the learned Assistant Government

Pleader for the Appellant, submits that she is not disputing the rate at which the compensation has been awarded. However, she submits that the Reference Court has calculated the amount by deducting the amount paid i.e. Rs.48,372/- from the total amount rather than deducting the amount from the compensation awarded before computing interest under Section 28 of the Act. She, therefore, submits that this calculation is erroneous and the amount ought to be reduced. The learned Assistant Government Pleader then submits that the Reference Court has awarded something more than what was claimed by the Claimant i.e. the Respondent herein and the Respondent has not paid Court fees on that amount which has been awarded. She submits that unless the Respondent is directed to pay Court fees on the awarded amount, he is not entitled to the same.

4. The Respondent has filed Cross Objections and has contended that the trial Court has ignored the fact that in the Land Acquisition References in which lands in Village Taloja were involved, Rs.15/- per sq.mtr. has been awarded by the Court. The trial Court, according to the Respondent, ought to have awarded the compensation at the rate of Rs.15/- per sq. mtr. as lands which were situate at Village Taloja were comparable in all respects with the lands involved in the present case.

5. Nobody appears for the Respondent despite service.

6. The submissions made by the learned Assistant Government Pleader are not raised as grounds in the Appeal. In the Appeal Memo, the State has challenged the award at the rates of Rs.12/-, Rs.10/- and Rs.8/- per sq. mtrs. The learned Assistant Government Pleader does not challenge these rates today and she prays that Court fees should be paid by the Respondent and that the amount of Rs.48,372/- should have been deducted prior to calculating the interest.

7. There is nothing to indicate in the proceedings before me as to when the amount of Rs.48,372/- was paid to the Respondent. The Award was made on 10th March 1986. However, there is nothing in the judgement of the Reference Court to indicate as to when the amount was paid. However, the submission of Mrs.Mulekar is correct. The interest under Section 28 calculated in Item No.4 by the Reference Court ought to be calculated after deducting the amount of Rs.48,372/- from the date on which the amount was paid. Obviously, therefore, till such time as the amount of Rs.48,372/- was not paid, the interest would be calculated on Rs.1,23,100/-. However, when the amount was paid to the Respondent, the

interest would be calculated on the balance amount after deducting Rs.48,372/- from Rs.1,23,100/-. Accordingly, the net amount payable to the Respondent would differ.

8. The Cross Objections of the Respondent are not being considered as the Respondent has not appeared before me to show that the lands in question are similar to the lands in Land Acquisition Reference Nos.472/86 and 309/87 which are situated at Village Taloja. There is nothing on record before me to establish the claim of the Respondent that the amount should have been awarded at Rs.15/- per sq.mtrs. The Cross Objections are, therefore, dismissed.

9. First Appeal partly allowed. Land Acquisition Reference No.31 of 1986 remanded to the Civil Judge, Senior Division, Alibag, District Raigad for recalculation after deducting the amount of Rs.48,372/- as aforesaid. The Reference Court is directed to compute the amount within four weeks of the receipt of the Writ from this Court. However, the Respondent will pay additional Court Fees on this amount before availing of the benefit.

10. Writ to go down immediately.